

State of Arizona  
House of Representatives  
Forty-sixth Legislature  
Second Regular Session  
2004

CHAPTER 301

# HOUSE BILL 2616

AN ACT

AMENDING SECTIONS 3-102, 3-107, 3-109.02, 3-143, 3-145, 3-148, 3-201, 3-201.01, 3-223, 3-235, 3-237, 3-242, 3-365, 3-367, 3-481, 3-605, 3-624, 3-701, 3-715, 3-716, 3-718, 3-723, 3-901, 3-904, 3-909, 3-1337, 3-1721, 3-2695, 3-2905, 3-2907, 3-3110, 3-3112 AND 3-3114, ARIZONA REVISED STATUTES; AMENDING SECTION 3-1332, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2003, CHAPTER 188, SECTION 3; AMENDING SECTION 3-1346, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2002, CHAPTER 270, SECTION 9; REPEALING SECTION 3-1346, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2002, CHAPTER 270, SECTION 10; REPEALING SECTIONS 3-369, 3-1743 THROUGH 3-1748 AND 3-3116, ARIZONA REVISED STATUTES; REPEALING SECTION 3-1203, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2002, CHAPTER 270, SECTION 2; AMENDING SECTION 36-897.01, ARIZONA REVISED STATUTES; RELATING TO AGRICULTURAL REGULATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 3-102, Arizona Revised Statutes, is amended to  
3 read:

4 3-102. Department organization

5 A. The Arizona department of agriculture is established consisting of  
6 the following divisions:

7 1. The animal services division, which is responsible for milk, dairy,  
8 livestock and aquaculture regulation, the state veterinarian, meat, poultry  
9 and egg inspection and performing the administrative functions authorized or  
10 contracted pursuant to law for the Arizona beef council.

11 2. The plant industries SERVICES division, which is responsible for  
12 the fruit and vegetable standardization program, AND entomological services  
13 and native plant protection.

14 3. The environmental services division, which is responsible for  
15 regulating seed, feed and agricultural chemicals, including pesticides and  
16 fertilizers, AND FOR NATIVE PLANT PROTECTION.

17 B. The following are established in addition to and separate from the  
18 divisions of the department:

19 1. A state agricultural laboratory.

20 2. An office of agriculture safety.

21 3. An office of inspections.

22 4. An office of commodity development and promotion.

23 C. The department shall have a central administrative service office  
24 providing:

25 1. Data processing, accounting and budgeting, records management,  
26 publications, property control and personnel services and training.

27 2. A program to cross-train appropriate personnel to enable them to  
28 perform similar functions or comparable work for different administrative  
29 units in the department.

30 Sec. 2. Section 3-107, Arizona Revised Statutes, is amended to read:

31 3-107. Organizational and administrative powers and duties of  
32 the director

33 A. The director shall:

34 1. Formulate the program and policies of the department and adopt  
35 administrative rules to effect its program and policies.

36 2. Ensure coordination and cooperation in the department in order to  
37 achieve a unified policy of administering and executing its responsibilities.

38 3. Subject to section 35-149, accept, expend and account for gifts,  
39 grants, devises and other contributions of money or property from any public  
40 or private source, including the federal government. All contributions shall  
41 be included in the annual report under paragraph 6 of this  
42 subsection. Monies received under this paragraph shall be deposited,  
43 pursuant to sections 35-146 and 35-147, in special funds for the purpose  
44 specified, which are exempt from section 35-190 relating to lapsing of  
45 appropriations.

1           4. Contract and enter into interagency and intergovernmental  
2 agreements pursuant to title 11, chapter 7, article 3 with any private party  
3 or public agency.

4           5. Administer oaths to witnesses and issue and direct the service of  
5 subpoenas requiring witnesses to attend and testify at or requiring the  
6 production of evidence in hearings, investigations and other proceedings.

7           6. Not later than September 30 each year issue a report to the  
8 governor and the legislature of the department's activities during the  
9 preceding fiscal year. The report may recommend statutory changes to improve  
10 the department's ability to achieve the purposes and policies established by  
11 law. THE DIRECTOR SHALL PROVIDE A COPY OF THE REPORT TO THE ARIZONA STATE  
12 LIBRARY, ARCHIVES AND PUBLIC RECORDS.

13          7. Establish, equip and maintain a central office in Phoenix and field  
14 offices as the director deems necessary.

15          8. Sign all vouchers to expend money under this title, which shall be  
16 paid as other claims against this state out of the appropriations to the  
17 department.

18          9. Coordinate agricultural education efforts to foster an  
19 understanding of Arizona agriculture and to promote a more efficient  
20 cooperation and understanding among agricultural educators, producers,  
21 dealers, buyers, mass media and the consuming public to stimulate the  
22 production, consumption and marketing of Arizona agricultural products.

23          10. Employ staff and terminate employment for cause as provided by  
24 title 41, chapter 4, article 5.

25          11. Conduct hearings on appeals of the portion of plow-up refunds  
26 withheld as a penalty pursuant to criteria adopted pursuant to section  
27 3-1087, subsection B. The director may adopt rules to implement this  
28 paragraph.

29          12. Cooperate with the Arizona-Mexico commission in the governor's  
30 office and with researchers at universities in this state to collect data and  
31 conduct projects in the United States and Mexico on issues that are within  
32 the scope of the department's duties and that relate to quality of life,  
33 trade and economic development in this state in a manner that will help the  
34 Arizona-Mexico commission to assess and enhance the economic competitiveness  
35 of this state and of the Arizona-Mexico region.

36          B. The director may:

37           1. Authorize in writing any qualified officer or employee in the  
38 department to perform any act that the director is authorized or required to  
39 do by law.

40           2. Construct and operate border inspection stations or other necessary  
41 facilities in this state and cooperate by joint agreement with an adjoining  
42 state in constructing and operating border inspection stations or other  
43 facilities within the boundaries of this state or of the adjoining state.

44           3. Cooperate with agencies of the United States, AND other states and  
45 other agencies of this state and enter into agreements in developing and

1 administering state and federal agricultural programs regarding the use of  
2 department officers, inspectors or other resources in this state, in other  
3 states or in other countries.

4 4. Cooperate with the office of tourism in distributing Arizona  
5 tourist information.

6 5. ENTER INTO COMPLIANCE AGREEMENTS WITH ANY PERSON, STATE OR  
7 REGULATORY AGENCY. FOR THE PURPOSES OF THIS PARAGRAPH, "COMPLIANCE  
8 AGREEMENT" MEANS ANY WRITTEN AGREEMENT OR PERMIT BETWEEN A PERSON AND THE  
9 DEPARTMENT FOR THE PURPOSE OF ENFORCING THE DEPARTMENT'S REQUIREMENTS.

10 ~~5-~~ 6. Abate, suppress, control, regulate, seize, quarantine or  
11 destroy any agricultural product or foodstuff that is adulterated or  
12 contaminated as the result of an accident at a commercial nuclear generating  
13 station as defined in section 26-301, paragraph 1. A person owning an  
14 agricultural product or foodstuff which THAT has been subject to this  
15 paragraph may request a hearing pursuant to title 41, chapter 6, article 10.

16 ~~6-~~ 7. Engage in joint venture activities with businesses and  
17 commodity groups that are specifically designed to further the mission of the  
18 department, that comply with the constitution and laws of the United States  
19 and that do not compete with private enterprise.

20 ~~7-~~ 8. Sell, exchange or otherwise dispose of personal property  
21 labeled with the "Arizona grown" trademark. Revenues received pursuant to  
22 this paragraph shall be credited to the commodity promotion fund established  
23 by section 3-109.02.

24 Sec. 3. Section 3-109.02, Arizona Revised Statutes, is amended to  
25 read:

26 3-109.02. Office of commodity development and promotion; fees;  
27 commodity promotion fund; definition

28 A. The office of commodity development and promotion shall provide for  
29 programs to stimulate, educate, encourage and foster the production and  
30 consumption of Arizona agricultural products domestically and abroad.

31 B. The office may provide authorized or contracted administrative  
32 functions for councils and commissions established by law.

33 C. The director may collect a fee, which the director shall establish  
34 by rule, for the issuance of certificates of free sale. The amount of the  
35 fee shall not exceed the actual cost of preparing the certificate of free  
36 sale. All monies collected from the fees shall be deposited, pursuant to  
37 sections 35-146 and 35-147, in the commodity promotion fund.

38 D. The commodity promotion fund is established. The fund consists of  
39 all monies collected pursuant to any promotional service provided to industry  
40 under this section and not supported by general fund appropriation, and  
41 monies received pursuant to section 3-107, subsection 8, paragraph ~~7-~~ 8. The  
42 director shall administer the fund. On notice from the director, the state  
43 treasurer shall invest and divest monies in the fund as provided by section  
44 35-313, and monies earned from investment shall be credited to the fund.  
45 Monies in the fund are:

1           1. Continuously appropriated to the department for the purposes of  
2 this section.

3           2. Exempt from the provisions of section 35-190 relating to lapsing  
4 of appropriations.

5           E. For the purposes of this section, "certificate of free sale" means  
6 a document that authenticates a commodity that is generally and freely sold  
7 in domestic channels of trade.

8           Sec. 4. Section 3-143, Arizona Revised Statutes, is amended to read:

9           3-143. Assistant director; powers and duties

10          A. The assistant director for the state agricultural laboratory is  
11 responsible for the administration, operation and control of the state  
12 agricultural laboratory.

13          B. The assistant director shall have all the following qualifications:

14           1. A master's degree in chemistry or its equivalent in practical  
15 experience as determined by the ~~commission~~ DIRECTOR.

16           2. Experience in agricultural laboratory testing or experience in a  
17 control laboratory of an agency that regulates feeds, fertilizers or  
18 pesticides.

19           3. Supervisory experience.

20          C. The assistant director shall enforce rules established pursuant to  
21 section 3-147:

22           1. For the voluntary certification of laboratories providing  
23 agricultural laboratory services to persons of this state.

24           2. For the mandatory certification of laboratories providing  
25 agricultural laboratory services to agencies and departments of this state  
26 or its political subdivisions, including those laboratories that are a part  
27 of a state agency or department, or a political subdivision of the THIS  
28 state.

29           3. Prescribing testing, documentation and quality assurance procedures  
30 and requirements.

31          D. The assistant director may contract with and assist other divisions  
32 and offices in the department and other departments and agencies of the  
33 state, local and federal governments in the furtherance of the purposes of  
34 this article, including contracting to provide laboratory services.

35          Sec. 5. Section 3-145, Arizona Revised Statutes, is amended to read:

36          3-145. Mandatory and voluntary certification; sampling  
37 procedures; application; expiration; renewal

38          A. A person who establishes, conducts or maintains a laboratory that  
39 provides agricultural laboratory services to agencies or departments of this  
40 state or its political subdivisions shall apply for a certificate from the  
41 state agricultural laboratory as proof that the laboratory so certified is  
42 in compliance with rules adopted by the director for the certification of  
43 such laboratories. Any other person providing agricultural laboratory  
44 services may apply for such a certificate.

1 B. A person providing guaranteed laboratory analysis information to  
2 distributors of commercial feed and whole seeds for consumption by livestock  
3 shall be certified under this section.

4 C. An individual who collects samples for the state agricultural  
5 laboratory or for any certified agricultural laboratory shall follow the  
6 sampling procedures established by the ~~state agricultural laboratory~~  
7 DIRECTOR.

8 D. A certified laboratory shall report test results only to the party  
9 who provided the original sample and, on request, to the state agricultural  
10 laboratory or as required by section 3-2611.01.

11 E. A person who desires a certificate pursuant to this section shall  
12 file with the state agricultural laboratory an application for a certificate  
13 accompanied by the application fee.

14 F. The application shall be on a form prescribed by the assistant  
15 director and furnished by the state agricultural laboratory and shall  
16 contain:

17 1. The name and location of the laboratory.

18 2. The name of the person owning the laboratory and the name of the  
19 person supervising the laboratory.

20 3. A description of the programs, services and functions provided by  
21 the laboratory.

22 4. Such other information as the assistant director deems necessary  
23 to carry out the purposes of this section.

24 G. The assistant director shall issue a certificate to an applicant  
25 if the assistant director is satisfied that the applicant has complied with  
26 the rules prescribing standards for certified laboratories.

27 H. A certificate expires one year after the date of issuance and shall  
28 be renewed upon payment of the renewal application fee as prescribed in  
29 section 3-146 and continued compliance with this article and the applicable  
30 rules.

31 Sec. 6. Section 3-148, Arizona Revised Statutes, is amended to read:

32 3-148. Grounds for denial, suspension or revocation of a  
33 certificate; review and appeal

34 A. The assistant director may refuse to grant or renew a certificate  
35 or may suspend or revoke a certificate if the assistant director has  
36 reasonable grounds to believe that the applicant or registrant is not in  
37 compliance with adopted rules relating to the certification of laboratories  
38 pursuant to this article. The assistant director shall notify an applicant  
39 of the reasons for his THE action.

40 B. The director shall review the assistant director's action on  
41 request of any person adversely affected by the action, AND THE DIRECTOR'S  
42 DECISION IS SUBJECT TO APPEAL PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10.

1       Sec. 7. Section 3-201, Arizona Revised Statutes, is amended to read:

2       3-201. Definitions

3       In this article, unless the context otherwise requires:

4       1. "Associate director" means the associate director of the division.

5       2. "Diseases" includes ~~any~~ ANY fungus, bacteria BACTERIUM, virus or  
6 other organism of any kind and any unknown cause ~~which~~ THAT is or may be  
7 found to be injurious, or likely to be or to become injurious to any  
8 domesticated or cultivated plant, or to the product of any such plant.

9       3. "Division" means the plant industries SERVICES division of the  
10 Arizona department of agriculture.

11       4. "Noxious weed" means any species of plant ~~which~~ THAT is, or is  
12 liable to be, detrimental or destructive and difficult to control or  
13 eradicate and shall include any species that the director, after  
14 investigation and hearing, shall determine to be a noxious weed.

15       5. "Nursery" means real property or other premises on or in which  
16 nursery stock is propagated, grown or cultivated or from which source nursery  
17 stock is offered for distribution or sale.

18       6. "Nursery stock" includes all trees, shrubs, vines, cacti, agaves,  
19 succulents, herbaceous plants whether annuals, biennials or perennials,  
20 bulbs, corms, rizomes, roots, decorative plant material, flowers, fruit pits  
21 or seeds, cuttings, buds, grafts, scions and other plants intended for sale,  
22 gift or propagation, either cultivated or collected in the wild, except seeds  
23 as defined REGULATED by article 2 of this chapter, FRUIT AND VEGETABLES  
24 REGULATED BY CHAPTER 3, ARTICLES 2 AND 4 OF THIS TITLE AND COTTON PLANTS.

25       7. "Pests" includes all noxious weeds, insects, DISEASES, mites,  
26 spiders, nematodes and other animal or plant organisms found injurious, or  
27 likely to be or to become injurious, to any domesticated, cultivated, native  
28 or wild plant, or to the product of any such plant.

29       8. "Plant" or "crop" includes every kind of vegetation, wild or  
30 domesticated, and any part thereof, as well as seed, fruit or other natural  
31 product of such vegetation.

32       9. "Shipment" includes anything ~~which~~ THAT is brought into the state  
33 or ~~which~~ THAT is transported within the state and ~~which~~ THAT may be the host  
34 or may contain or carry or may be susceptible of containing, carrying or  
35 having present on, in, ~~or~~ about it any plant pest or plant disease.

36       Sec. 8. Section 3-201.01, Arizona Revised Statutes, is amended to  
37 read:

38       3-201.01. Associate director; powers and duties

39       A. The associate director may, as authorized by the director:

40       1. Quarantine, treat, eradicate, destroy or reject out of state  
41 ~~noxious weeds and crop pests and diseases~~, and all plants ~~which~~ THAT are  
42 infested or infected with ~~crop pests or diseases~~, or ~~which~~ THAT are the host  
43 or carrier or the means of propagating or disseminating a crop pest or  
44 disease.

1           2. Enforce all rules and orders necessary to carry out the purposes  
2 of this article:

3           (a) To prevent introduction of a crop pest or disease into the state.

4           (b) To prevent propagation or dissemination of a crop pest or disease  
5 from one locality to another in this state.

6           (c) To control, eradicate or suppress a crop pest or disease or  
7 prevent introduction into this state of a crop pest or disease from out of  
8 state.

9           (d) Which TO fix the terms and conditions on which plants or any other  
10 article or thing of any nature whatever likely to be infested or infected  
11 with or be the carrier of, or the means of propagating or disseminating, a  
12 crop pest or disease which THAT may be shipped or brought into this state,  
13 or moved from one locality or place to another locality or place in this  
14 state.

15           (e) Which TO prohibit plants or things likely to be infected with, be  
16 the carrier of or be the means of spreading, propagating or disseminating a  
17 crop pest or disease from being shipped or brought into this state or moved  
18 from one locality to another in this state.

19           3. Cooperate with the United States secretary of agriculture and his  
20 THE SECRETARY'S representatives in interstate matters pertaining to the  
21 objects of this article.

22           4. Proceed according to law to abate any public nuisance prohibited  
23 by this article.

24           5. Establish fees pursuant to section 3-217 and adopt rules necessary  
25 to effect and administer the following nursery certification programs:

26           (a) an Arizona certified NURSERY CERTIFICATION program, for any person  
27 who requests to participate, to certify that a participating nursery meets  
28 the criteria established by the associate director OR THE ENTRY CRITERIA  
29 ESTABLISHED BY ANOTHER STATE, COMMONWEALTH OR COUNTRY.

30           (b) An export criteria program, for any person who requests to  
31 participate, to certify that a nursery or nursery stock meets the criteria  
32 established by another state, country or commonwealth.

33           6. REQUIRE RECORDS TO DETERMINE THE ORIGIN AND QUARANTINE  
34 CERTIFICATION STATUS OF NURSERY STOCK SOLD, OFFERED FOR SALE OR TRANSPORTED  
35 BY ANY PERSON INTO OR WITHIN THIS STATE.

36           B. The associate director shall:

37           1. Keep the director informed concerning dangers to the agricultural  
38 and horticultural interests of this state from noxious weeds or crop pests  
39 and diseases.

40           2. Faithfully enforce and execute all rules and orders of the  
41 department pertaining to the division, using all necessary and proper means  
42 including court action.

1           3. Prepare, and ~~have printed~~ PUBLISH ELECTRONICALLY, POST AND MAKE  
2 AVAILABLE at least once each year bulletins containing such information as  
3 the associate director deems proper and the current rules and orders of the  
4 department and ~~mail copies to various agricultural organizations and carriers~~  
5 ~~transporting plants and other agricultural products into or in this state.~~

6           4. Enter in or on any premises or other place, train, vehicle or other  
7 means of transportation in or entering this state ~~which~~ THAT is suspected of  
8 containing, harboring or having present one or more ~~noxious weeds or crop~~  
9 ~~pests or diseases.~~

10          5. Make inspections to determine if a ~~noxious weed or crop pest or~~  
11 ~~disease is present.~~

12          6. Open, without unnecessary injury to property, any box, container  
13 or package at any time during business or operating hours, and, after  
14 notifying the owner or person in charge, if ~~he~~ THE OWNER OR PERSON IN CHARGE  
15 is found in the county, open any car, enclosure or building ~~which~~ THAT the  
16 associate director suspects contains, harbors or has present a ~~noxious weed~~  
17 ~~or crop pest or disease~~, and examine and inspect the contents as may be  
18 necessary to determine if a ~~noxious weed or crop pest or disease~~ is present.

19          7. If in performing his other duties ~~he~~ THE ASSOCIATE DIRECTOR  
20 determines that plant materials inspected and being delivered or transported  
21 or shipped by mail or courier are dead, dying or otherwise inferior in  
22 quality, mark the plant or package, or both, advising the recipient and  
23 sender that, in the judgment of the associate director, the plant materials  
24 were found to be dead, dying or of inferior quality. This paragraph does not  
25 authorize the associate director to perform inspections solely for the  
26 purposes set forth in this paragraph.

27          ~~C. The associate director, with the approval of the director, may~~  
28 ~~employ one or more entomologists who are qualified by scientific training or~~  
29 ~~practical experience.~~

30          ~~D. The director may assign personnel from the office of inspections~~  
31 ~~to perform any of the inspection-related activities prescribed by this~~  
32 ~~chapter under the direction of the associate director.~~

33          Sec. 9. Section 3-223, Arizona Revised Statutes, is amended to read:

34          3-223. Interdivision livestock inspection

35          The plant industries SERVICES division, the animal services division  
36 and the office of inspections shall cooperate to provide livestock  
37 inspections at border inspection stations or department offices as required  
38 under section 3-1332, subsection E and to train the appropriate personnel to  
39 perform the livestock inspections.

40          Sec. 10. Section 3-235, Arizona Revised Statutes, is amended to read:

41          3-235. Seed dealer and labeler licenses; fee; exception

42          A. An Arizona seed dealer or an out-of-state seed dealer who sells,  
43 distributes, processes or mixes for the use of others any agricultural,  
44 vegetable or ornamental plant seed, except vegetable and ornamental plant  
45 seed in packages of less than one pound, shall obtain a license from the

1 division, authorizing the dealer to sell, distribute, process or mix such  
2 seed. A dealer is not entitled to have a license unless ~~he~~ THE DEALER has  
3 an established plant, warehouse or place of business. A separate seed dealer  
4 license is required for each place of business in this state from which seed  
5 regulated by this article is sold.

6 B. A seed labeler who labels any agricultural, vegetable or ornamental  
7 plant seed for sale, distribution or processing shall obtain a seed labeler  
8 license from the division FOR EACH PLACE OF BUSINESS AT WHICH SEED REGULATED  
9 BY THIS ARTICLE IS LABELED.

10 C. An application for a license shall be accompanied by the fee  
11 prescribed by section 3-233. A license shall be renewed annually not later  
12 than July 1, and the application for renewal shall be accompanied by the fee  
13 prescribed by section 3-233.

14 D. This section does not apply to a farmer growing seed crops for sale  
15 to a seed dealer or labeler. The portion of crops received by an individual  
16 who harvests the producer's crop and receives part of the crop as payment for  
17 services rendered in the harvesting shall be exempt from ~~the provisions of~~  
18 this section.

19 Sec. 11. Section 3-237, Arizona Revised Statutes, is amended to read:

20 3-237. Label requirements

21 A. Each container of agricultural, vegetable and ornamental plant seed  
22 sold, offered for sale, exposed for sale or transported within the state for  
23 sowing purposes shall bear or have attached in a conspicuous place a plainly  
24 written label or tag in the English language, which statement shall not be  
25 modified or denied in the labeling or on another label attached to the  
26 container, giving the following information:

27 1. For all seeds named and treated as defined in this article:

28 (a) A word or statement indicating that the seed has been treated.

29 (b) The commonly accepted coined chemical or abbreviated chemical name  
30 of the applied substance or substances used for treating seed which  
31 substances must be registered for use by the division, the United States  
32 department of agriculture and the United States environmental protection  
33 agency. ~~The provisions of~~ This section shall also apply to seed which THAT  
34 has been treated by custom applicators, or in a custom manner, even though  
35 the transfer of ownership is not intended.

36 (c) If the substance in the amount present with the seed is harmful  
37 to human or other vertebrate animals, a cautionary statement such as "Do not  
38 use for food or feed or oil purposes." The cautionary statement for  
39 mercurials and similarly toxic substances shall be a poison statement or  
40 symbol.

41 (d) If the seed is claimed to be inoculated, a label to show the month  
42 and year beyond which the inoculant on the seed is no longer claimed to be  
43 effective, using a statement such as: "Inoculant not claimed to be effective  
44 after (month and year)."

2. For agricultural seeds:

(a) The commonly accepted name of the kind or the kind and variety of each agricultural seed component in excess of five per cent of the whole, and the percentage by weight of each in the order of its predominance. For kinds of seed whose variety is generally known, the label shall show the name of the kind and variety. If the words "variety not stated" are used, the word "type" may also be used. The director shall determine by rule which kinds of agricultural seeds must be labeled to show the variety name or the words "variety not stated". Hybrids shall be labeled as "hybrids". Where more than one component is named, the word "mixture" or the word "mixed" shall be shown conspicuously on the label.

(b) The lot number or other lot identification.

(c) The origin, state or foreign country, if known, of alfalfa, red clover and field corn, except hybrid corn. If the origin is unknown, that fact shall be stated.

(d) The percentage by weight of all weed seed.

(e) The name and rate of occurrence per pound of each kind of restricted noxious-weed seed present.

(f) The percentage by weight of agricultural seeds, which may be designated as "crop seeds," other than those required to be named on the label.

(g) The percentage by weight of inert matter.

(h) For each named agricultural seed:

(i) The percentage of germination, exclusive of hard seed.

(ii) The percentage of hard seed, if present.

(iii) If desired, the germination and hard seed total.

(iv) The month and year the test was completed to determine such percentages.

(i) The name and address of the person who labeled the seed, or who sells, offers or exposes the seed for sale within this state.

3. For vegetable seeds in containers of one pound or less:

(a) The name of the kind and variety of seed.

(b) For seeds which THAT germinate less than the standard last established by the director under this article:

(i) The percentage of germination, exclusive of hard seed.

(ii) The percentage of hard seed, if present.

(iii) The month and year the test was completed to determine such percentages.

(iv) The words "below standard" in not less than eight point type.

(c) The name and address of the person who labeled the seed, or who sells, offers or exposes the seed for sale within this state.

4. For vegetable seeds in containers of more than one pound:

(a) The name of each kind and variety present in excess of five per cent and the percentage by weight of each in order of its predominance.

(b) The lot number or other lot identification.

1 (c) For each named vegetable seed:  
2 (i) The percentage of germination, exclusive of hard seed.  
3 (ii) The percentage of hard seed, if present.  
4 (iii) If desired, the germination and hard seed total.  
5 (iv) The month and year the test was completed to determine such  
6 percentages.

7 (d) The name and address of the person who labeled the seed, or who  
8 sells, offers or exposes the seed for sale within this state.

9 5. For ornamental plant seed:

10 (a) The name of the kind and variety of seed.

11 (b) The calendar month and year in which the seed was tested or the  
12 year in which the seed was packaged.

13 (c) The name and address of the person or firm that packeted the seed  
14 and labeled it.

15 6. For agricultural, vegetable and ornamental seeds in containers or  
16 bulk:

17 (a) On applying for protection of a variety and payment of the  
18 prescribed fee, the owner or the owner's designee may label the variety or  
19 containers of the seed of the variety or plants produced from the seed  
20 substantially as follows: "unauthorized propagation prohibited--(unauthorized  
21 seed multiplication prohibited)--U.S. variety protection applied for." If  
22 applicable, "PVPA 1994" may be added to the notice.

23 (b) On issuance of a certificate, the owner of the variety or the  
24 owner's designee may label the variety or containers of the seed of the  
25 variety or plants produced from the seed substantially as follows:  
26 "unauthorized propagation prohibited--(unauthorized seed multiplication  
27 prohibited)--U.S. protected variety." If applicable, "PVPA 1994" may be  
28 added to the notice.

29 (c) On filing an application or an amendment to an application  
30 specifying seed of the variety is to be sold by the variety name only as a  
31 class of certified seed, the owner or the owner's designee may label  
32 containers of the seed of the variety substantially as follows: "unauthorized  
33 propagation prohibited--U.S. variety protection applied for specifying that  
34 seed of this variety is to be sold by variety name only as a class of  
35 certified seed."

36 B. IN ADDITION TO THE REQUIREMENTS OF SUBSECTION A OF THIS SECTION,  
37 AT THE TIME OF SALE AT RETAIL THE LABEL ON EACH CONTAINER OF SEED FOR NONFARM  
38 USAGE SHALL BEAR A CONSPICUOUS VIABILITY STATEMENT THAT:

39 1. IS PRINTED IN CAPITAL LETTERS THE SAME SIZE AS OTHER PRINTED WORDS  
40 ON THE LABEL AND IS CONTIGUOUS TO THE GERMINATION DATE.

41 2. STATES "SELL BY (MONTH AND YEAR)". THE DATE SHALL NOT EXCEED THE  
42 FIFTEEN MONTH RETAIL PERIOD ESTABLISHED BY SECTION 3-242, SUBSECTION A,  
43 PARAGRAPH 1, SUBDIVISION (b).

44 3. SHALL BE AFFIXED AT THE TIME CONTAINERS INTENDED FOR RETAIL SALES  
45 ARE LABELED.

1       Sec. 12. Section 3-242, Arizona Revised Statutes, is amended to read:

2       3-242. Violations; civil penalties

3       A. The director may assess a civil penalty of at least fifty dollars  
4 but not more than three hundred dollars for each violation, with each  
5 affected customer constituting a separate violation, against a seed dealer  
6 or labeler who, after a hearing, is found by a preponderance of the evidence:

7       ~~1. To have not completed the test to determine the percentage of~~  
8 ~~germination required by section 3-237 within a nine month period, exclusive~~  
9 ~~of the calendar month in which the test was completed, immediately before the~~  
10 ~~sale, exposure for sale or offering for sale or transportation.~~

11       1. TO HAVE NOT COMPLETED THE TEST TO DETERMINE THE PERCENTAGE OF  
12 GERMINATION REQUIRED BY SECTION 3-237 IMMEDIATELY BEFORE THE SALE, OFFERING  
13 FOR SALE OR TRANSPORTATION:

14       (a) WITHIN A NINE MONTH PERIOD, EXCLUSIVE OF THE CALENDAR MONTH IN  
15 WHICH THE TEST WAS COMPLETED, FOR ANY AGRICULTURAL, ORNAMENTAL OR VEGETABLE  
16 SEED INTENDED FOR WHOLESALE OR COMMERCIAL PRODUCER PURCHASE.

17       (b) WITHIN A FIFTEEN MONTH PERIOD, EXCLUSIVE OF THE CALENDAR MONTH IN  
18 WHICH THE TEST WAS COMPLETED, FOR ANY AGRICULTURAL, ORNAMENTAL OR VEGETABLE  
19 SEED INTENDED FOR RETAIL PURCHASE.

20       2. To have not obtained any license that is required by this article.

21       B. The director may assess a civil penalty of not more than two  
22 thousand five hundred dollars for each violation, with each affected customer  
23 constituting a separate violation, against a seed dealer or labeler who,  
24 after a hearing, is found by a preponderance of the evidence:

25       1. To have labeled or sold seed represented to be certified seed,  
26 registered seed or foundation seed unless it has been produced and labeled  
27 according to the rules and regulations of an officially recognized seed  
28 certification or registration agency.

29       2. To have labeled or sold seed that has been treated with any  
30 approved substance designed to control or repel plant disease organisms or  
31 insect pests attacking the seeds, unless each container bears a label giving  
32 information in the form the director prescribes by rule, showing the commonly  
33 accepted name and the kind or nature of the substance and, if the substance  
34 may be harmful to humans or other vertebrate animals, a warning or cautionary  
35 statement that is adequate to protect the public.

36       3. To have hindered or obstructed an authorized agent of the  
37 department from performing official duties under this article.

38       4. To have failed to comply with a cease and desist order.

39       5. To have labeled or sold seed that has a false or misleading label.

40       6. To have labeled or sold seed that has been advertised in a false  
41 or misleading manner.

42       Sec. 13. Section 3-365, Arizona Revised Statutes, is amended to read:

43       3-365. Buffer zones

44       A. The odoriferous pesticides profenofos, sulprofos, def and merphos  
45 and other pesticides with similar odoriferous characteristics shall not be

1 applied within one-fourth mile of a school, a day care center, a health care  
2 institution, A CHILD CARE GROUP HOME AS DEFINED BY SECTION 36-897 or at least  
3 twenty-five residences adjoining the field to be sprayed, except by soil  
4 injection.

5 B. Highly toxic pesticides or paraquat shall not be applied within  
6 four hundred feet of a health care institution, except by soil injection.

7 C. Highly toxic pesticides or paraquat shall not be applied in liquid  
8 form, except by soil injection, within one hundred feet by aircraft or within  
9 fifty feet by ground equipment of at least twenty-five residences adjoining  
10 the field to be sprayed. Highly toxic pesticides shall not be applied in  
11 dust form by aircraft within three hundred feet of at least twenty-five  
12 residences adjoining the field to be sprayed.

13 D. Highly toxic pesticides and paraquat shall not be applied within  
14 one-fourth mile of schools, CHILD CARE GROUP HOMES, or day care  
15 centers. However, highly toxic pesticides and paraquat may be applied within  
16 one-fourth mile of schools, CHILD CARE GROUP HOMES, and day care centers  
17 unless authorized activities at the school, CHILD CARE GROUP HOME or day care  
18 center are scheduled to occur before the reentry time period assigned to the  
19 pesticide by provisions of the product label elapses. A responsible  
20 individual at a school or a day care center shall be notified of the  
21 application of pesticides, other than highly toxic pesticides or paraquat,  
22 by aircraft during daylight hours.

23 E. Nothing in this section permits the application of pesticide in  
24 such a way as to cause drift within the grounds of a residence, school,  
25 health care institution, CHILD CARE GROUP HOME, or day care center, but  
26 compliance with this section and the requirements of the pesticide label  
27 establishes a presumption of compliance with this subsection.

28 F. For the purposes of this section, distances shall be measured from  
29 the property boundary of a school, residence, day care center, CHILD CARE  
30 GROUP HOME, or health care institution closest to the field to be sprayed to  
31 the area of the field that is to be sprayed.

32 Sec. 14. Section 3-367, Arizona Revised Statutes, is amended to read:

33 3-367. Private right of action

34 A. Except as provided in subsection B of this section, any person  
35 having an interest ~~which~~ THAT is or may be adversely affected may commence  
36 a civil action in superior court on the person's own behalf:

37 1. Against any person, including this state and any political  
38 subdivision of this state, who is alleged to be in violation of this article  
39 or of an order, permit or rule adopted or issued pursuant to this article,  
40 other than a de minimis violation. The court shall have jurisdiction to  
41 enforce the provision, order, permit or rule and to apply any appropriate  
42 civil penalty under section 3-370.

43 2. Against the director where there is alleged a failure of the  
44 director to perform any act or duty under this article ~~which~~ THAT is not

1 discretionary with the director. The court shall have jurisdiction to order  
2 the director to perform such act or duty.

3 B. No action may be commenced in either of the following cases:

4 1. Before sixty days after the plaintiff has given notice of the  
5 alleged violation to the department and to any alleged violator or if, within  
6 the sixty days, the director begins and diligently performs the act or duty  
7 sought to be compelled.

8 2. If the attorney general has commenced and is diligently prosecuting  
9 an action before the department under section ~~3-369~~ 3-368 or a civil action  
10 in the superior court of this state to require compliance with the permit,  
11 order, rule or provision of this article.

12 C. In any action under this section:

13 1. The director, if not a party, may intervene as a matter of right.

14 2. The plaintiff has the burden of proof.

15 D. The court, in issuing any final order in any action brought  
16 pursuant to this section, may:

17 1. Award costs of litigation, including reasonable attorney and expert  
18 witness fees, to any party whenever the court determines such award is  
19 appropriate and, in addition, to the defendant in the case of a frivolous  
20 action.

21 2. Provide for injunctive, or other equitable, relief or assess  
22 civil penalties that could have been administratively assessed. Any monies  
23 collected as civil penalties shall be deposited, pursuant to sections 35-146  
24 and 35-147, in the state general fund.

25 E. This section shall not be construed to abrogate the provisions of  
26 chapter 1, article 2 of this title.

27 Sec. 15. Repeal

28 Section 3-369, Arizona Revised Statutes, is repealed.

29 Sec. 16. Section 3-481, Arizona Revised Statutes, is amended to read:

30 3-481. Definitions

31 In this article, unless the context otherwise requires:

32 1. "Associate director" means the associate director of the division.

33 2. "Bulk lot" means fresh fruit or vegetables that are not contained  
34 in a box, carton, crate or lug but may be contained in a bin or a similar  
35 container and are set apart from fresh fruit and vegetables that are packaged  
36 in containers authorized pursuant to this article or rules adopted pursuant  
37 to this article.

38 3. "By-products" means a product commercially processed or  
39 manufactured for resale from fruits or vegetables or their juices.

40 4. "Commission merchant" means a person who receives on consignment  
41 or solicits from the producer any fruit or vegetable for sale on commission  
42 on behalf of the producer or who accepts any fruit or vegetable in trust from  
43 the producer for the purpose of resale. Commission merchant does not include  
44 a shipper.

1           5. "Container" means a box, carton or lug that is used for packing,  
2 shipping or selling fruit or vegetables that are authorized by this article  
3 or rules adopted pursuant to this article.

4           6. "Dealer" means a person that sells, markets or distributes fruit  
5 or vegetables that the person purchased from a producer or markets as an  
6 agent, broker or commission merchant, except at retail. Dealer does not  
7 include a shipper.

8           7. "Division" means the plant industries SERVICES division of the  
9 Arizona department of agriculture.

10          8. "Lot" means a unit of identical or similar items that are produced  
11 by one person and that are grouped or consolidated in one or more containers  
12 for packaging or transporting or a cluster of identical or similar items that  
13 are produced by one person and that are included in the same shipping order,  
14 bill of lading or other itemized transport order.

15          9. "Packer" means a person, other than a producer, shipper or dealer,  
16 engaged in the business of harvesting or packing fruit or vegetables.

17          10. "Person" includes an individual, firm, association, partnership,  
18 trust or corporation.

19          11. "Producer" means a person engaged in this state in the business of  
20 producing or causing fruit or vegetables to be produced for market in  
21 commercial quantities.

22          12. "Shipper" means a person who ships, transports, sells or markets  
23 fruit or vegetables under the person's registered trademark or label or a  
24 person who first markets the fruit or vegetables on behalf of the producer.  
25 Shipper does not include a commission merchant.

26          13. "Supervisor" means the supervisor of standardization employed  
27 pursuant to section 3-483.

28          Sec. 17. Section 3-605, Arizona Revised Statutes, is amended to read:

29          3-605. Federal milk ordinance; health and sanitation provisions

30          A. ~~Except where~~ UNLESS inconsistent with the provisions of this  
31 chapter, the production, transportation, handling and sale of milk and milk  
32 products and the inspection of dairy herds, dairies and milk plants shall be  
33 regulated in accordance with the terms of the federal milk ordinance, ~~a~~  
34 ~~certified copy of which shall be on file in the office of the secretary of~~  
35 ~~state.~~

36          B. The words "health authority" when used in the federal milk  
37 ordinance means the director or his THE DIRECTOR'S authorized representative.

38          C. Powers and duties in the federal milk ordinance relating to health  
39 and sanitation are vested in the director. In addition, the director shall  
40 adopt rules necessary to assure that all milk and milk products sold or  
41 distributed for human consumption are free from unwholesome, poisonous or  
42 other foreign substances and filth, insects or disease-causing  
43 organisms. The rules shall prescribe reasonably necessary measurements  
44 governing the production, processing, labeling, storing, handling and  
45 transportation of milk and milk products. The rules shall prescribe minimum

standards for the sanitary facilities and conditions which THAT shall be maintained in any dairy or other facility and in any truck or other vehicle in which milk or milk products are produced, processed, handled or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles which THAT do not comply with rules and minimum standards. This subsection and the rules prescribed pursuant to this subsection do not apply to dispensing and selling frozen desserts at retail.

D. The provisions of the federal milk ordinance apply to this state.

Sec. 18. Section 3-624, Arizona Revised Statutes, is amended to read:

3-624. Cheese; ingredients; pasteurized cheese; part-skim cheese; labeling; cottage cheese excepted

A. Cheese manufactured in the state for sale shall be made from pasteurized milk, skim milk, cream, goat milk or sheep milk conforming to the requirements prescribed by this article. All cheese sold shall be labeled to indicate the variety and grade thereof OF THE CHEESE. Pasteurized cheese or pasteurized-blended cheese bearing a varietal name shall be made from cheese of the variety indicated and conforming to the requirements for fat and moisture prescribed for cheese of that variety. The standards of composition for pasteurized cheese, pasteurized-blended cheese, emulsified cheese and process cheese shall be fixed by the associate director and shall conform to those prescribed by the secretary of the United States department of agriculture. Cheese manufactured in the state shall be labeled at the factory with a manufacturer's factory number assigned annually by the associate director. If made outside the state, cheese shall bear a label stating the name and address of the manufacturer or distributor.

B. It is unlawful to expose for sale any part-skim cheese or skim cheese unless there is attached to the outside of every vessel, can, package or cheese exposed or sold a tag legibly bearing in black letters at least one inch in height the words "part-skim cheese No. 1," "part-skim cheese No. 2" or "skim cheese," as the case may be. All part-skim or skim cheddar or granular cheese shall be labeled to indicate the grade on its entire outer edge in a manner specified by the associate director. All other varieties of part-skim or skim cheese shall be labeled to indicate the grade in such manner as the associate director prescribes.

C. Nothing in this section shall be deemed to apply to cottage cheese. The addition of cream, milk or other fluids to uncreamed or creamed cottage cheese shall take place only in a milk distributing plant or a manufacturing milk plant licensed under the provisions of this article.

D. ~~Nothing in This section shall~~ DOES NOT apply to any cheese commonly referred to as "hard cheese", which THAT is manufactured from unpasteurized milk products and which THAT is aged for a period of ~~at least one year~~ SIXTY DAYS from the date of its moulding as evidenced by the date of moulding stamped on the cheese at the time of manufacturing.

1           Sec. 19. Section 3-701, Arizona Revised Statutes, is amended to read:  
2           3-701. Definitions  
3           In this article, unless the context otherwise requires:  
4           1. "Agent" includes a bailee, broker, commission merchant, factor,  
5           auctioneer, solicitor, consignee and any other person acting upon the express  
6           or implied authority of another person.  
7           2. "Associate director" means the associate director of the division.  
8           3. "Carton" means egg cartons as used in commercial practice in the  
9           United States.  
10          4. "Case" means standard thirty-dozen egg cases as used in commercial  
11          practice in the United States.  
12          5. "Consumer" means a person who buys eggs for use as food and not for  
13          resale in any form.  
14          6. "Container" means any box, one-half case, basket, flat or other  
15          receptacle, excluding a carton as defined in paragraph 3 and excluding a case  
16          as defined in paragraph 4.  
17          7. "Dealer" means any person who contracts or obtains from the  
18          producer, or any producer-dealer, dealer or manufacturer, possession or  
19          control of any eggs or egg products for the purpose of candling, grading,  
20          selling, peddling, distributing, dealing in or trading in eggs or egg  
21          products for resale to an egg dealer within this state, producer-dealer,  
22          manufacturer, retailer or consumer for human consumption within this state.  
23          8. "Deceptive" means any arrangement of the contents of any case,  
24          container, subcontainer, lot, load or display in which the eggs in the outer  
25          layer or in any portion exposed to view are in grade, size, condition or in  
26          any other respect so superior to those in the interior or unexposed portion  
27          as to materially misrepresent the contents or any part of the contents as to  
28          size, grade, condition or any other respects.  
29          9. "Division" means the animal services division of the Arizona  
30          department of agriculture.  
31          10. "Expiration date" means the words "sell by" or "buy thru" followed  
32          by a date, including the month and day, which THAT is not more than  
33          twenty-four days after the eggs were candled and THAT includes the date the  
34          eggs were candled.  
35          11. "Grade" means classified as to quality and applies to a dozen,  
36          case, lot or load of eggs.  
37          12. "Half case" means a fifteen-dozen container or one-half standard  
38          thirty-dozen egg case as used in commercial practice in the United States.  
39          13. "Inspector" means an egg inspector appointed or assigned pursuant  
40          to section 3-709.  
41          14. "Manufacturer" means a person engaged in the business of operating  
42          or controlling the operation of one or more breaking plants producing liquid  
43          eggs, dried eggs, frozen eggs or other egg products for human consumption.  
44          15. "Marked" means plainly, legibly and conspicuously labeled, stamped,  
45          stenciled, printed, typed, lettered or branded.

1        16. "Mislabel" means the placing or presence of any false, deceptive  
2 or misleading mark, term, statement, design, device, inscription or any other  
3 designation upon eggs or upon a carton, container or subcontainer of eggs,  
4 or upon the label or lining or wrapper thereof, or upon the outward end of  
5 the case, or upon a placard or sign used in connection therewith, or in  
6 connection with any display having reference to eggs.

7        17. "NEST RUN EGGS" MEANS EGGS THAT ARE PACKED AS THEY COME FROM THE  
8 PRODUCTION FACILITIES WITHOUT HAVING BEEN WASHED, SIZED OR CANDLED FOR  
9 QUALITY, REGARDLESS OF WHETHER SOME UNDERGRADES HAVE BEEN REMOVED.

10       ~~17.~~ 18. "Person" includes an individual, household, firm, corporation,  
11 company or association.

12       ~~18.~~ 19. "Producer" means a person engaged in the business of operating  
13 or controlling the operation of one or more ranches producing eggs within  
14 this state.

15       ~~19.~~ 20. "Producer-dealer" means a person engaged in the business of  
16 operating or controlling the operation of one or more egg ranches producing  
17 eggs within the state, and who, while in possession or control of any  
18 additional eggs other than his THE PERSON'S own production, candles, grades,  
19 sells, peddles, distributes, deals in or trades in eggs for resale to  
20 dealers, producer-dealers, manufacturers or retailers.

21       ~~20.~~ 21. "Quality" means the inherent properties of any product which  
22 determine its relative degree of excellence.

23       ~~21.~~ 22. "Retailer" means a person who buys candled and graded eggs or  
24 egg products from a producer, licensed manufacturer, licensed producer-dealer  
25 or licensed dealer for resale to a consumer only, or who buys egg products  
26 to use in the preparation of other consumer foods for resale.

27       ~~22.~~ 23. "Sell" includes offer for sale, expose for sale, have in  
28 possession for sale, exchange, barter or trade.

29       ~~23.~~ 24. "Size" means classified as to weight.

30       ~~24.~~ 25. "Standard" means the quality specifications for a single egg.

31       ~~25.~~ 26. "Subcontainer" means a container which THAT is used within  
32 another container.

33       ~~26.~~ 27. "Supervisor" means the supervisor of egg inspection or the  
34 supervisor's authorized representative.

35       ~~27. "Unclassified" means nest-run eggs which are unmarked as to grade~~  
36 ~~and size.~~

37       Sec. 20. Section 3-715, Arizona Revised Statutes, is amended to read:

38       3-715. Unlawful sales; unlawful designations

39       A. It is unlawful to sell to retailers or consumers NEST RUN eggs which  
40 ~~are unclassified~~, except that a person may sell to retailers or consumers  
41 twenty-five cases of such NEST RUN eggs from his THE PERSON'S own production  
42 each calendar year. Retailers may sell such NEST RUN eggs to consumers only  
43 if, such eggs when on hand, offered for sale or placed on sale, THEY are  
44 clearly marked "unclassified" "NEST RUN". Each placard for cases,  
45 half-cases, cartons or containers of such NEST RUN eggs and all advertising,

1 invoices and egg purchase tickets relating to such NEST RUN eggs shall  
2 likewise be clearly marked "unclassified" "NEST RUN" as prescribed in this  
3 article. The total quantity of unclassified NEST RUN eggs on hand or on sale  
4 at any time shall not exceed the total quantity of such NEST RUN eggs as  
5 shown on invoices or egg purchase tickets. Any person who sells unclassified  
6 NEST RUN eggs shall keep an invoice or egg purchase ticket as prescribed in  
7 section 3-718.

8 ~~B. Any person proposing to sell unclassified eggs shall, prior to any~~  
9 ~~such sales, A PERSON WHO PROPOSES TO SELL NEST RUN EGGS MUST FIRST notify the~~  
10 ~~department in writing of his THAT intent to sell such eggs and specify his~~  
11 ~~THE location, AND the number of laying hens he owns or which are or in his~~  
12 ~~possession, the place of production and the general area of the THIS state~~  
13 ~~in which such THE NEST RUN eggs are to be sold.~~

14 C. It is unlawful for any person selling any portion of his A daily  
15 production as graded eggs to sell any OTHER portion thereof as unclassified  
16 NEST RUN eggs, except that any person may change his THE sales from graded  
17 to unclassified if he notifies NEST RUN BY NOTIFYING the department in  
18 writing prior to such change.

19 D. It is unlawful for any person selling any portion of his A daily  
20 production as unclassified NEST RUN eggs to sell any OTHER portion thereof  
21 as graded eggs, except that any person may change his THE sales from  
22 unclassified NEST RUN eggs to graded eggs if he notifies BY NOTIFYING the  
23 department in writing within five days from the date of change.

24 E. Any person selling unclassified NEST RUN eggs as provided in this  
25 section shall notify the department in writing within five days from the date  
26 each calendar year his THE PERSON'S total sales of such eggs amount to  
27 twenty-five cases.

28 F. The department shall keep a record of all notifications made under  
29 this section.

30 G. It is unlawful to sell or represent as chicken eggs, eggs from any  
31 other species of fowl, or mixed eggs from more than one species of fowl, or  
32 eggs from ducks, turkeys, geese or any species of fowl other than chickens  
33 without marking the cases, half-cases, containers and subcontainers of such  
34 eggs and indicating fully by sign or placard for bulk lots the species of  
35 fowl from which such eggs were produced.

36 H. It is unlawful to place on open display in retail stores cases with  
37 markings or any designation of brand, size, grade or other matter which THAT  
38 does not properly and accurately apply to the eggs placed or packed therein  
39 unless all of such markings have been removed, erased or obliterated.

40 I. It is unlawful to prepare, pack, place, deliver for shipment,  
41 deliver for sale, load, ship or transport or sell in cases, cartons,  
42 containers or subcontainers eggs for human consumption:

43 1. Unless each case, carton, container or subcontainer of chicken eggs  
44 is marked with the full, correct and unabbreviated designation of size and  
45 grade of the eggs therein according to the standards as prescribed pursuant

1 to this chapter, together with the name of the producer, dealer, retailer or  
2 agent by or for whom the eggs were graded or marked.

3 2. Unless cases, cartons, containers or subcontainers of chicken eggs  
4 marked grade AA or grade A are marked with the correct expiration date.

5 3. Which THAT are mislabeled.

6 4. Which THAT are deceptive.

7 5. Which THAT are or contain inedibles.

8 6. Which THAT have been in an incubator, unless the inedibles have  
9 been removed and the cases have been labeled as a hatchery test.

10 J. The owner or person in possession of eggs which THAT fail to meet  
11 the requirements of subsection I, paragraphs 3 and 5 of this section, when  
12 such eggs are in cold storage, or are being transported from cold storage  
13 and in possession of a dealer for candling and grading, shall not be  
14 prosecuted by reason of failure of the eggs to conform to such  
15 provisions. Such THE eggs shall be subject to the provisions of section  
16 3-730, subsections B, C and D. The owner or person in possession of eggs  
17 which THAT are going to a licensed person for candling or grading shall not  
18 be prosecuted for failing to meet the requirements of subsection I, paragraph  
19 5 of this section, if the eggs do not contain more than five per cent by  
20 count of inedibles.

21 K. It is unlawful for retailers, producers, producer-dealers and  
22 dealers to sell or expose for sale eggs that are marked grade AA or grade A  
23 after the expiration date marked on the carton, case or container  
24 expires, except that retailers may:

25 1. ~~Sell eggs after the expiration date on the cartons or containers~~  
26 ~~if the eggs are segregated from and in a separate area of the retail display~~  
27 ~~shelf, case or cabinet from cartons or containers with unexpired expiration~~  
28 ~~dates. A conspicuous, clearly visible and easily readable sticker, tag or~~  
29 ~~label which states that the expiration date has passed shall be affixed to~~  
30 ~~each carton or container with an expired expiration date. The sticker, tag~~  
31 ~~or label shall be a color which distinctly contrasts with the carton or~~  
32 ~~container and labeling colors and shall not be superimposed over the grade,~~  
33 ~~size or expiration date.~~

34 2. ~~Repack eggs from cartons or containers with expired expiration~~  
35 ~~dates into other cartons or containers if both of the following occur:~~

36 (a) ~~The other carton or container is marked grade B and does not~~  
37 ~~contain a brand name.~~

38 (b) ~~The eggs are exposed for sale within three days after the~~  
39 ~~expiration date marked on the original carton or container has passed.~~

40 3. ~~Repack clean unbroken eggs from damaged cartons or containers which~~  
41 ~~contained smashed or broken eggs at the same grade level if the eggs are~~  
42 ~~repacked in a carton or container which is the same brand and has the same~~  
43 ~~or an earlier expiration date as the damaged carton or container provided~~  
44 ~~that the eggs are not washed or cleaned with a rag and the damaged eggs and~~  
45 ~~cartons are not allowed to accumulate.~~

1       4. ~~Replace a checked or cracked egg if the contents of the egg are not~~  
2 ~~leaking with a clean, sound egg from another carton or container which is the~~  
3 ~~same grade level and brand and has the same or an earlier expiration date as~~  
4 ~~the checked or cracked egg.~~

5       Sec. 21. Section 3-716, Arizona Revised Statutes, is amended to read:

6       3-716. Inspection fees; report and payment by dealers;  
7       exception; penalty; collection

8       A. An inspection fee of not more than three mills per dozen on shell  
9 eggs and three mills per pound on egg products shall be paid by a dealer,  
10 producer-dealer, manufacturer or producer on all eggs and egg products  
11 regardless of origin, sold to a retailer, hotel, hospital, bakery,  
12 restaurant, other eating place or consumer for human consumption within this  
13 state. Inspection fees on eggs used for the purpose of breaking, freezing  
14 or drying shall be paid by the manufacturer, dealer or distributor if sold  
15 or offered for sale to retailers or consumers for human consumption within  
16 this state.

17       B. If it appears that the revenue derived from inspection fees is more  
18 than is required for the administration of this article, the director may  
19 decrease the inspection fee and at any time thereafter may increase or  
20 decrease the inspection fee, but at no time shall it exceed an amount of  
21 three mills per dozen on shell eggs or three mills per pound on egg products.

22       C. All manufacturers, dealers, producer-dealers and producers shall  
23 file:

24       1. A quarterly report with the department showing the name and address  
25 of the manufacturer, dealer, producer-dealer or producer.

26       2. The number of dozen of eggs or pounds of egg products sold or  
27 delivered for the period to retail stores, hotels, hospitals, bakeries,  
28 restaurants, other eating places or consumers for human consumption within  
29 this state.

30       D. The report shall be accompanied by check or money order covering  
31 the inspection fee total of a value equal to the inspection fee in force at  
32 that time on all eggs or egg products shown on such report within thirty days  
33 following the close of quarterly report periods.

34       E. The records shall be retained for a period of one year and shall  
35 be open at all times to the inspection of the department.

36       F. Notwithstanding the requirements of this section, twenty-five cases  
37 per year of unclassified NEST RUN eggs as provided in section 3-715 may be  
38 sold by any person to retailers or consumers without being subject to the  
39 report and inspection fee as provided by this section.

40       G. In addition to the inspection fees prescribed by this section, a  
41 penalty of ten per cent shall be added for the delinquent filing of any  
42 report or the delinquent payment of any inspection fee, and if the report and  
43 payment are not made within ten days after notification of delinquency, the  
44 penalty shall be twenty-five per cent of the inspection fee. Persons filing  
45 a false report shall be penalized fifty per cent of the amount due for

1 inspection fees. The penalties prescribed by this section shall be  
2 deposited, pursuant to sections 35-146 and 35-147, in the state egg  
3 inspection account FUND.

4 H. Such inspection fees and penalties shall be collected by civil  
5 action filed by the county attorney.

6 Sec. 22. Section 3-718, Arizona Revised Statutes, is amended to read:

7 3-718. Sale of eggs; invoice; deterioration of eggs below  
8 grade; exceptions

9 A. Every person selling eggs or egg products to a producer-dealer,  
10 dealer, retailer, manufacturer, hotel, hospital, bakery, restaurant or other  
11 eating place, or consumer shall furnish an invoice showing the date of sale,  
12 the exact quantity of eggs or egg products, size and grade of the eggs, or  
13 unclassified NEST RUN, according to the standards prescribed pursuant to this  
14 chapter, together with the name and address of the person buying and selling  
15 the eggs. An egg purchase ticket given by a dealer or producer-dealer to a  
16 producer when the producer sells unclassified NEST RUN eggs to such dealer  
17 or producer-dealer complies with this section. A copy of the invoice or egg  
18 purchase ticket shall be kept on file by the seller and the buyer at their  
19 respective places of business for a period of thirty days and shall be open  
20 at all reasonable times to inspection by an inspector.

21 B. A person having eggs marked in accordance with the invoice who  
22 keeps the eggs for such time after they are purchased as to cause them to  
23 deteriorate to a lower grade or size and then offers or exposes them for sale  
24 under the mark of the invoice grade or size violates ~~the provisions of this~~  
25 article.

26 C. No invoice shall be required on eggs when sales are made by the  
27 producer from eggs produced on the producer's premises and sold direct to the  
28 consumer.

29 D. No invoice shall be required on eggs sold or delivered by a  
30 retailer when selling eggs from ~~his retail~~ THE RETAILER'S establishment to  
31 consumers.

32 Sec. 23. Section 3-723, Arizona Revised Statutes, is amended to read:

33 3-723. Price advertisements; designation of size and grade of eggs

34 Advertising by sign, placard or otherwise the price at which chicken  
35 eggs are offered for sale without marking the full, correct and unabbreviated  
36 designation of size and grade of the eggs, or unclassified NEST RUN,  
37 according to the standards prescribed pursuant to this chapter on the  
38 advertisement is prohibited.

39 Sec. 24. Section 3-901, Arizona Revised Statutes, is amended to read:

40 3-901. Definitions

41 In this chapter, unless the context otherwise requires:

42 1. "Associate director" means the associate director of the division.

43 2. "Division" means the ~~plant industries~~ ENVIRONMENTAL SERVICES  
44 division of the Arizona department of agriculture.

1           3. "State agency" means any agency or political subdivision of the  
2 state.

3           4. "State land" includes land owned by this state or by a state  
4 agency.

5           Sec. 25. Section 3-904, Arizona Revised Statutes, is amended to read:

6           3-904. Destruction of protected plants by private landowners;  
7                 notice; exception

8           A. ~~Except in an emergency,~~ This chapter does not prevent the  
9 destruction of protected native plants or clearing of land or cleaning or  
10 removing protected native plants ~~from a canal, lateral ditch, survey line,~~  
11 ~~building site or road or other right-of-way~~ by the owner of the land or the  
12 owner's agent if:

13           1. The land is in private ownership.

14           2. The protected native plants are not transported from the land or  
15 offered for sale.

16           3. The owner or the owner's agent notifies the department pursuant to  
17 this section of the intended destruction at least:

18           (a) Twenty days before the plants are destroyed over an area of less  
19 than one acre.

20           (b) Thirty days before the plants are destroyed over an area of one  
21 acre or more but less than forty acres.

22           (c) Sixty days before the plants are destroyed over an area of forty  
23 acres or more.

24           4. The protected plants are destroyed within one year of the date of  
25 destruction disclosed in the notice given the department in paragraph 3 of  
26 this subsection.

27           B. The notice under subsection A, paragraph 3, subdivision (a) may be  
28 oral or written. The notice under subsection A, paragraph 3, subdivisions  
29 (b) and (c) must be in writing. The notice under subsection A, paragraph 3,  
30 whether written or oral, shall include:

31           1. The name and address of the owner of the land and, if the owner is  
32 not a resident of this state, the name and address of the owner's agent in  
33 this state to be contacted regarding the destruction or salvage of the native  
34 plants.

35           2. The earliest date that destruction of the protected native plants  
36 will begin.

37           3. A general description of the area in which the protected native  
38 plants will be destroyed.

39           4. Whether the owner intends to allow salvage of the plants to be  
40 destroyed.

41           C. The director by rule shall:

42           1. Prescribe the form and content of the notice which THAT shall be  
43 adequate and comply with subsection B and shall provide landowners with  
44 copies of the notice on request.

1           2. Provide for an alternative procedure in cases in which the  
2 landowner is not required to notify the department in writing. The  
3 alternative procedure shall include:

4           (a) Oral notification by the landowners to the department.

5           (b) Preparation by the department of a written notice form. The  
6 department shall transmit a confirming copy to the landowner, and the owner  
7 may not begin destruction of protected native plants until he THE OWNER  
8 receives the written confirmation and the time prescribed under subsection  
9 A, paragraph 3 has elapsed.

10          D. The written notice form, whether completed by the landowner or the  
11 department, shall include the following notice in bold-faced type:

12          Notice: Consent of the landowner is required before entering  
13 any lands described in this notice.

14          E. Within five working days after receiving the notice required under  
15 this section the department shall post a copy of the notice in a conspicuous  
16 location in the public area of the division office that administers the  
17 department activities in the county where the land is located on which the  
18 native plants are to be destroyed. The division shall also mail a copy of  
19 the notice to any salvage operator or interested party that has requested  
20 notice of such activities occurring during the current calendar year. The  
21 director by rule may establish and the associate director shall collect a  
22 reasonable fee from those receiving copies of the notice to cover the cost  
23 of providing this notice.

24          F. If the department receives a notice of intended destruction under  
25 subsection A, paragraph 3 and subsequently receives a complete and correct  
26 application for a salvage permit executed by the owner of the land or his THE  
27 OWNER'S agent for any highly safeguarded or salvage restricted native plants  
28 intended to be destroyed under the notice, the department shall facilitate  
29 the prompt salvage of the plants by issuing a permit, and any associated tags  
30 and seals, within four working days.

31          G. The notice requirements of subsection A, paragraph 3 do not apply  
32 to the destruction of native plants that occurs in the normal course of  
33 mining, commercial farming and stock raising operations.

34          H. This section does not apply to the destruction of protected native  
35 plants on individually owned residential property of ten acres or less where  
36 initial construction has already occurred.

37          Sec. 26. Section 3-909, Arizona Revised Statutes, is amended to read:

38          3-909. Shipment of plants; exhibition of permit and certificate  
39               of inspection to carrier; sale of highly safeguarded  
40               plants

41          A. No person or common carrier may transport a plant, or any part of  
42 a plant, belonging to the protected group, nor receive or possess a protected  
43 native plant for transportation within or without this state, except for  
44 manufactured wood articles, unless the person offering the plant for shipment  
45 exhibits to the person or common carrier a valid written permit for the

1 transportation of the plant or part of a plant and has securely and properly  
2 attached a valid required native plant tag and seal to the plant. If for  
3 transport without the state, the plant shall also bear a certificate of  
4 inspection by the department. All protected native plant species or  
5 varieties, if not grown in Arizona and imported into this state, shall be  
6 ~~declared at an Arizona agricultural inspection station or a district office~~  
7 ~~of the department and proceed to their destination under quarantine orders~~  
8 ~~issued by agents of the department employed at such station or office~~  
9 TRANSPORTED DIRECTLY TO A DEPARTMENT FIELD OFFICE AT WHICH A MOVEMENT PERMIT  
10 AND SEALS MUST BE PURCHASED BEFORE PROCEEDING TO THE FINAL DESTINATION.

11 B. Plants of the protected group which THAT are shipped into this  
12 state shall be accompanied by all permits, tags and seals required by the  
13 exporting state or country.

14 C. It is unlawful for a person to commercially sell or offer for  
15 commercial sale in interstate commerce any highly safeguarded native plant  
16 or in the course of interstate commercial activity to deliver, receive,  
17 carry, transport or ship by any means any such plant in furtherance of a  
18 commercial sale or offer for commercial sale.

19 D. The seller of export restricted native plants shall make a good  
20 faith effort to sell the export restricted native plants within the state  
21 prior to export.

22 Sec. 27. Repeal

23 Section 3-1203, Arizona Revised Statutes, as amended by Laws 2002,  
24 chapter 270, section 2, is repealed.

25 Sec. 28. Section 3-1332, Arizona Revised Statutes, as amended by Laws  
26 2003, chapter 188, section 3, is amended to read:

27 3-1332. Method, place and time of inspecting livestock

28 A. Livestock officers and inspectors shall inspect livestock, other  
29 than equine and livestock subject to authorized self-inspection, for health,  
30 marks and brands at loading stations, at places of exit from the state and  
31 at places where livestock are gathered to be sold, slaughtered, transported,  
32 conveyed, shipped or driven from their range for any purpose whatever except  
33 when livestock are being moved from pasture to a destination in this state  
34 and no change of ownership, slaughter or other disposition is involved and  
35 the owner is utilizing self-inspection approved by the division under section  
36 3-1203. Livestock officers and inspectors need not inspect outgoing  
37 livestock from feed lots, dairies and producers utilizing self-inspection  
38 pursuant to section 3-1203 but may conduct periodic inspections to ascertain  
39 compliance with this article.

40 B. Feed lots, dairies and producers utilizing self-inspection approved  
41 by the division under section 3-1203 shall comply with the applicable  
42 provisions of this section and procedures established by the division.

43 C. Brand inspections shall be made by daylight and in a manner which  
44 THAT enables the livestock officer or inspector personally to see, inspect  
45 and record each and every mark and brand. Inspections of livestock for

1 health at a slaughterhouse may be made by other than daylight if adequate  
2 artificial light is provided.

3 D. Upon being advised that livestock is subject to inspection,  
4 livestock officers and inspectors shall arrange for the inspection of the  
5 livestock and inspect such livestock within twelve hours.

6 E. The animal services division, the plant industries SERVICES  
7 division and the office of inspections shall cooperate to provide livestock  
8 inspections at border inspection stations or department offices and to train  
9 appropriate personnel to perform these inspections. Employees of the plant  
10 industries SERVICES division acting under this subsection do not have  
11 enforcement powers otherwise granted to livestock officers. In the case of  
12 an apparent discrepancy, disease or other problem a livestock officer or  
13 inspector employed by the animal services division shall be called on to make  
14 a final inspection and determination. The associate director of the animal  
15 services division shall assign at least one livestock officer or inspector  
16 to be on call from each office operated by the plant industries SERVICES  
17 division under this subsection.

18 Sec. 29. Section 3-1337, Arizona Revised Statutes, is amended to read:

19 3-1337. Service charge and inspection fee; self-inspection;  
20 civil penalties

21 A. Livestock officers and inspectors shall collect from the person in  
22 charge of cattle inspected a service charge of three dollars plus an  
23 inspection fee of twenty-five cents per head for making inspections for the  
24 transfer of ownership, sale, slaughter or transportation of cattle.

25 B. Livestock officers and inspectors shall collect from the person in  
26 charge of sheep inspected a service charge of three dollars plus an  
27 inspection fee of five cents per head for making inspections for the transfer  
28 of ownership, sale, slaughter or transportation of sheep.

29 C. Livestock officers and inspectors shall collect from the person in  
30 charge of dairy cattle inspected a service charge of three dollars plus an  
31 inspection fee of twenty-five cents per head for making inspections for the  
32 transfer of ownership, sale, slaughter or transportation of dairy cattle.

33 D. The division may approve self-inspection by MOVERS OF BEEF CATTLE,  
34 feedlots and dairies pursuant to section 3-1203, subsection D. Movement  
35 shall be documented on forms provided by the department. MOVERS OF BEEF  
36 CATTLE, feedlots and dairies which THAT utilize self-inspection shall pay an  
37 outgoing inspection fee of twenty cents per head.

38 E. Service charges and inspection fees collected by the livestock  
39 officers and inspectors and feedlots and dairies utilizing self-inspection  
40 shall be remitted to the division. Service charges and inspection fees  
41 incurred by feedlots and dairies shall be remitted to the department within  
42 ten days after the end of the month in which the livestock were inspected.

1       Sec. 30. Section 3-1346, Arizona Revised Statutes, as amended by Laws  
2 2002, chapter 270, section 9, is amended to read:

3       3-1346. Seasonal inspection for exhibition livestock; fee

4       A. Seasonal inspection certificates may be issued, under the  
5 self-inspection program, for exhibition livestock for any purpose other than  
6 slaughter, sale or trade. The fee for a seasonal brand inspection  
7 certificate is five dollars plus fifty cents per head of livestock in excess  
8 of ten.

9       B. The certificate shall state the date of issuance, the sex, color  
10 and breed, the brand or brands and their location and any other identifying  
11 marks and the name of the owner of the livestock. The words "seasonal brand  
12 inspection" shall be written across the face of the certificate.

13       C. The certificate is valid for ~~the calendar year of~~ TWELVE MONTHS  
14 AFTER the date of issuance and shall accompany the livestock while in  
15 transit.

16       Sec. 31. Repeal

17       Section 3-1346, Arizona Revised Statutes, as amended by Laws 2002,  
18 chapter 270, section 10, is repealed.

19       Sec. 32. Section 3-1721, Arizona Revised Statutes, is amended to read:

20       3-1721. Petition of seizure; notice of seizure; lien for  
21 expenses; forced sale; disposition of proceeds;  
22 nonliability of state; neglect or cruel treatment of  
23 equine; civil penalty; legal representation

24       A. Any person or peace officer who believes that an equine is in poor  
25 physical condition because of neglect or cruel treatment may petition upon  
26 affidavit a justice of the peace of the precinct or a city magistrate of the  
27 city in which the equine is found for an order authorizing the department to  
28 take possession of and provide care for such THE equine for a fifteen-day  
29 period. The order shall not be issued unless the affidavit provides that the  
30 livestock custody fund established by section 3-1377 has a balance which THAT  
31 permits the department to provide such care or that the department can  
32 demonstrate that the expenses have been contracted for pursuant to subsection  
33 F- E of this section. The clerk of the court or justice of the peace, as the  
34 case may be, after filing and docketing the petition, shall enter a brief  
35 statement of the petition on the docket and set a time for a hearing which  
36 THAT is not less than five and not more than fifteen days after the petition  
37 is filed. The order shall state the time and place of the hearing.

38       B. On receiving the order the department shall take possession of the  
39 equine. The department shall serve the order on the owner of the equine, if  
40 known, at least twenty-four hours before the hearing, either by personal  
41 service on the owner or by leaving a copy of the order with a person of  
42 suitable discretion at the owner's residence or place of business. If the  
43 owner is not known, the department shall give notice by posting a copy of the  
44 order on the day of the seizure in a conspicuous place at the location where  
45 the equine was seized and in at least two public places in the county where

1 the equine was seized. The order shall be served by a livestock officer,  
2 constable or sheriff of the county.

3 C. If, at the hearing, it is determined that the equine at the time  
4 of taking possession was not in poor physical condition because of neglect  
5 or cruel treatment, the owner may immediately reclaim the equine and shall  
6 not be liable for payment of any expense incurred in the handling, feeding  
7 and care of the equine. Unless malice is proved, no action taken by an  
8 employee of the department or by a peace officer pursuant to this article  
9 shall be subject to civil or criminal liability.

10 ~~D. If, at the hearing held pursuant to subsection A of this section,~~  
11 ~~the owner is not awarded immediate expense-free custody of the equine, the~~  
12 ~~owner may reclaim the equine within five days after the hearing by paying to~~  
13 ~~the department all of the expenses incurred in handling, feeding and caring~~  
14 ~~for the equine. The department shall deposit, pursuant to sections 35-146~~  
15 ~~and 35-147, the monies collected in the livestock custody fund established~~  
16 ~~by section 3-1377.~~

17 E. D. Upon failure of the owner to be awarded immediate, expense-free  
18 possession of the equine pursuant to subsection C of this section, ~~or upon~~  
19 ~~failure of the owner to reclaim the equine pursuant to subsection D of this~~  
20 ~~section,~~ the department shall either sell the equine at public auction or,  
21 if the equine's condition makes its sale impractical, dispose of the equine  
22 in the most humane manner possible. The department shall deposit, pursuant  
23 to sections 35-146 and 35-147, the proceeds of the sale in the livestock  
24 custody fund established by section 3-1377 for distribution in the following  
25 priority:

26 1. The department shall be reimbursed for auction, handling, feeding  
27 and caring expenses.

28 2. Any monies derived from the sale in excess of the expenses to be  
29 paid pursuant to paragraph 1 shall be paid to the owner of the equine. After  
30 thirty days if the owner has not claimed the money, this money shall revert  
31 to the livestock custody fund established by section 3-1377.

32 F. E. The director may contract with any person or group to handle,  
33 feed and care for any equine taken into custody pursuant to this  
34 section. The state shall not be liable for injury or death of any person or  
35 equine or damage to property caused by the performance of the contract.

36 G. F. Notwithstanding any provision of this article to the contrary,  
37 the county attorney of the county in which the equine was seized may, at any  
38 time prior to the expiration of fifteen days after the seizure of the equine,  
39 take charge of and keep the equine at the expense of the county when he deems  
40 THE COUNTY ATTORNEY CONSIDERS it to be of evidentiary value in any criminal  
41 prosecution relating to the condition of the equine.

42 H. G. In addition to violating section 13-2910, a person who subjects  
43 an equine to neglect or cruel treatment is subject to a civil penalty of not  
44 more than seven hundred fifty dollars for each violation. All civil

1 penalties assessed pursuant to this subsection shall be deposited, pursuant  
2 to sections 35-146 and 35-147, in the state general fund.

3       ~~F.~~ H. The county attorney of the county, or the city attorney of the  
4 city, in which the livestock is seized may represent the livestock officer  
5 and the interests of this state in proceedings under this section.

6       ~~J.~~ I. Upon receipt the department shall deposit, pursuant to sections  
7 35-146 and 35-147, all monies, except civil penalties, collected pursuant to  
8 this section or received as a money donation from any public or private  
9 group, society, association or individual in the livestock custody fund  
10 established by section 3-1377. The monies in the fund shall be used to  
11 reimburse the department for expenses incurred in the handling, feeding, care  
12 and auctioning of equines seized pursuant to this section.

13       Sec. 33. Repeal

14       Sections 3-1743 through 3-1748, Arizona Revised Statutes, are repealed.

15       Sec. 34. Section 3-2695, Arizona Revised Statutes, is amended to read:  
16       3-2695. Collecting dead stock by tallow and rendering companies

17       A. Any person, tallow company or rendering plant removing dead stock  
18 to its place of business shall make a report on a form provided by the  
19 department and pursuant to such rules as the director may prescribe to  
20 prevent the use of such THESE animals or the products thereof OF THESE  
21 ANIMALS for human food purposes. ~~Upon~~ ON this report the driver or person  
22 in charge of the truck working out of the plant, or the person receiving the  
23 call to collect such THE dead stock, shall show the following information and  
24 such ANY other information as the director may prescribe by rule:

25       1. Date of removal.

26       2. Name, address and telephone number, if any, of the person  
27 requesting removal of dead stock, and of the owner of the stock, if known.

28       3. Location and description of dead stock.

29       4. Name of the company receiving the dead stock.

30       5. Name of the person making the report.

31       6. Date of the report.

32       B. The original of the report shall be submitted to the department.

33       C. No meat or meat food product processed or packed by any rendering  
34 plant or tallow company shall be traded or sold for human or animal  
35 consumption except meat from dead livestock processed for use as animal food  
36 under rules prescribed by the director and sterilized meat scrap or tankage  
37 which THAT may be used as animal feed supplement IN COMPLIANCE WITH FEDERAL  
38 REGULATIONS.

39       D. Notwithstanding the provisions of title 36, chapter 8, article 1,  
40 prohibiting the use of meat from an animal which THAT has died other than by  
41 slaughter for animal food, any such meat may be used for animal food if  
42 processed as provided in subsection C.

1           Sec. 35. Section 3-2905, Arizona Revised Statutes, is amended to read:

2           3-2905. Inspections and certification of facilities

3           A. The department shall establish a schedule of periodic inspections  
4 of all licensed facilities to determine and verify compliance with this  
5 article and the rules adopted under this article. By applying for and  
6 obtaining a license under this article, the licensee is deemed to consent to  
7 such periodic inspections. In addition, the director or the director's  
8 authorized representative may enter private property at any reasonable time  
9 to inspect, obtain factual data and otherwise ascertain compliance with or  
10 violations of this article. Inspections shall be on reasonable notice to the  
11 owner or manager of the facility unless reasonable grounds exist to believe  
12 that such notice would impair the enforcement of this article. If required  
13 by law, the director shall obtain a warrant for such unscheduled entry and  
14 inspection.

15           B. On request, and with payment of the prescribed fee, the department  
16 shall physically inspect an aquatic animal facility for infectious diseases  
17 and causative agents. The inspector shall be ~~a pathologist or a fish health~~  
18 ~~inspector certified by the American fisheries society or a successor~~  
19 ~~organization~~ APPROVED BY THE DIRECTOR. If the inspector determines that the  
20 facility is free of restrictive infectious diseases and causative agents, the  
21 inspector shall issue to the facility a certificate to that effect within ten  
22 days after completing the inspection. The certificate is valid for one year  
23 from the date of the inspection.

24           C. On request and without charge the department shall provide a  
25 certificate that an aquaculture facility has been inspected and certified  
26 free of restrictive diseases and causative agents within the preceding twelve  
27 months. Each shipment or lot shall be accompanied by a certificate  
28 identifying the shipment. This subsection does not apply to the  
29 transportation of live baitfish for personal use that complies with  
30 applicable rules of the game and fish commission.

31           Sec. 36. Section 3-2907, Arizona Revised Statutes, is amended to read:

32           3-2907. Licenses; fee; exemption

33           A. A person may not engage in any of the following activities relating  
34 to aquaculture unless the person possesses a current valid license issued by  
35 the division:

36           1. Aquaculture facility activities, including selling, trading,  
37 displaying, purchasing, exporting, possessing, propagating and rearing live  
38 aquatic animals or plants.

39           2. Transporting live aquatic animals to persons who are licensed to  
40 resell, process or stock aquatic animals.

41           3. Processing facility activities, including cleaning, reshaping or  
42 packing fresh or frozen aquatic animals or plants for distribution or resale.

43           4. Operating a fee fishing facility which THAT permits the public to  
44 remove aquatic animals by any harvesting method from a privately controlled  
45 body of water as authorized by the direct or indirect payment of a fee.

1           B. This chapter does not apply to state or federal game and fish  
2 agencies.

3           C. Each facility or transporter must be separately licensed with the  
4 division including payment of the prescribed fee.

5           D. Each license issued under this section shall state the name and  
6 business address of the licensee, the name and address of the person  
7 designated as the licensee's agent to the division, the location of the  
8 premises for which it is issued, other than a transporter, and any other  
9 information deemed necessary by the director.

10          E. A licensee may not transfer or convey the license to any other  
11 person or entity. The license is valid only for the named licensee and for  
12 the particular premises identified on the license. If there is a transfer  
13 or change in the ownership of a licensee or the premises identified on the  
14 license, or a change in the licensee's agent, the licensee shall notify the  
15 division within thirty days.

16          F. A license is valid for one year from the date prescribed by the  
17 associate director. The license may be renewed by applying and paying the  
18 required renewal fee at any time within thirty days before the license  
19 expires. If a license expires, it may be renewed within ninety days after  
20 expiration by paying an additional prescribed fee increment. A license that  
21 has been expired for more than ninety days may not be renewed.

22          G. An application for an original or renewal license under this  
23 section shall be submitted to the division together with the appropriate fee  
24 on a form furnished by the department. An applicant shall furnish any  
25 additional information that may be required.

26          H. Within fifteen THIRTY days after receiving the COMPLETED  
27 application, the division shall either issue or deny the license. The  
28 division shall issue a license, in the name under which the applicant  
29 proposes to conduct business, to an applicant that has satisfied the  
30 licensing procedures and requirements of this article. If the applicant  
31 fails to meet the requirements for an original or renewal license under this  
32 article, the associate director shall notify the applicant by certified mail  
33 stating the reasons for the denial and advising the applicant of the right  
34 to request a hearing PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10. The  
35 applicant must request the hearing in writing within thirty days after the  
36 date the notice is mailed. The associate director shall schedule the hearing  
37 to be held within thirty days after the request is received. If the record  
38 made at the hearing discloses that the applicant meets the qualifications and  
39 other requirements of this chapter, the hearing officer shall enter an order  
40 to that effect and direct that the appropriate license be issued. If the  
41 applicant is found to be unqualified or otherwise fails to meet the  
42 requirements of this article, the hearing officer shall enter an order to  
43 that effect.

1 I. The application for an original or renewal license shall be  
2 accompanied by a license fee set by the director according to the cost of  
3 administering this article, but not less than one hundred dollars.

4 J. A person who sells aquatic products at retail is exempt from the  
5 requirements of this section unless the person engages in any of the  
6 activities required to be licensed under subsection A.

7 Sec. 37. Section 3-3110, Arizona Revised Statutes, is amended to read:

8 3-3110. Citations

9 A. If the assistant director, after an inspection or investigation,  
10 determines that there is reasonable cause to believe that a violation exists  
11 he THE ASSISTANT DIRECTOR shall with reasonable promptness recommend to the  
12 director that a citation be issued to the employer. If the director issues  
13 a citation it shall be in writing and shall contain the following:

14 1. A particular description of the nature of the violation, including  
15 a reference to the provision of this article, or of the standard or rule  
16 alleged to have been violated.

17 2. A reasonable time to abate the violation.

18 3. A notice that the employer may request a hearing pursuant to  
19 ~~section 3-3116~~ if he THE EMPLOYER is aggrieved by the citation.

20 B. A certified mail delivery receipt or a signed verification of  
21 delivery in person is prima facie evidence of the receipt of a citation.

22 C. Each citation or copy of a citation issued under this section shall  
23 be prominently posted at or near each place a violation referred to in the  
24 citation existed.

25 D. No citation may be issued after the expiration of a period of six  
26 months from the date of the inspection which THAT produced evidence of the  
27 violation. If in the course of an investigation the department identifies  
28 any additional alleged violator, the department may investigate the  
29 additional alleged violator. No citation may be issued after the expiration  
30 of six months from the date the additional alleged violator is identified by  
31 the department.

32 Sec. 38. Section 3-3112, Arizona Revised Statutes, is amended to read:

33 3-3112. Enforcement procedure

34 A. If the director, after an inspection or investigation, issues a  
35 citation pursuant to section 3-3110, the director shall notify the employer  
36 by mail, within a reasonable time after termination of the inspection or  
37 investigation, of any penalty proposed to be assessed pursuant to section  
38 3-3113 and that the employer has thirty days within which to request a  
39 hearing pursuant to title 41, chapter 6, article 10 if the employer wishes  
40 to appeal the citation or proposed assessment of penalty.

41 B. The period permitted for correction of a violation does not begin  
42 to run until the entry of a final order in the case of any review proceedings  
43 pursuant to this section initiated by the employer in good faith and not  
44 solely for delay or avoidance of penalties. If the director has reason to  
45 believe that an employer has failed to correct a violation for which a

1 citation has been issued within the period permitted, the director shall  
2 notify the employer by mail of such failure, of the penalty proposed to be  
3 assessed pursuant to section 3-3113 and that the employer has thirty days  
4 within which to request a hearing pursuant to title 41, chapter 6, article  
5 10 if the employer wishes to appeal the notification or proposed assessment  
6 of penalty.

7 C. An affected employee or employee representative may request a  
8 hearing to appeal the period allowed an employer to abate a particular  
9 violation ~~pursuant to section 3-3116~~ if the employee or employee  
10 representative requests the hearing within the abatement period allowed in  
11 the citation or within thirty days from the date of receipt of the citation,  
12 whichever is shorter.

13 D. On a showing by an employer of a good faith effort to comply with  
14 the abatement requirements of a citation, and that abatement has not been  
15 completed because of factors beyond the reasonable control of the employer,  
16 the department or its authorized designee, after an opportunity for a hearing  
17 ~~as provided in section 3-3116~~, shall issue an order affirming or modifying  
18 the abatement requirements in the citation. The department shall provide  
19 affected employees or representatives of affected employees with an  
20 opportunity to participate as parties to hearings under this subsection.

21 Sec. 39. Section 3-3114, Arizona Revised Statutes, is amended to read:

22 3-3114. Additional penalty for wilful or repeated violation  
23 causing employee permanent disability or death  
24 covered by workers' compensation; payment to  
25 employee; enforcement

26 A. In addition to penalties prescribed by section 3-3113, the director  
27 shall assess a penalty of twenty-five thousand dollars against an employer  
28 who is assessed a penalty under section 3-3113, subsection A for each  
29 employee injury resulting in permanent disability or death if the director  
30 finds all of the following:

31 1. The employee injury resulting in permanent disability or death was  
32 caused by the violation for which the employer is assessed a penalty under  
33 section 3-3113, subsection A.

34 2. Compensation benefits are paid to the injured employee, or in the  
35 event of death, his THE EMPLOYEE'S dependents, under title 23, chapter 6.

36 3. The violation for which the employer is assessed a penalty under  
37 section 3-3113, subsection A did not result from the injured or deceased  
38 employee's disobedience to specific instructions given to the employee  
39 regarding the job condition causing his THE injury or death or relating to  
40 the safety standards applicable to that job condition.

41 B. Each additional penalty assessed under this section shall be paid  
42 to the injured employee, or in the event of death, his THE EMPLOYEE'S  
43 dependents, in addition to the benefits paid under title 23, chapter 6.

44 C. ~~if PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10, an employer~~  
45 ~~requests MAY REQUEST~~ a hearing on an additional penalty assessed under this

1 ~~section, the director shall refer the matter to a hearing officer assigned~~  
2 ~~to the office.~~ An additional penalty under this section that becomes final  
3 operates as a judgment against the employer and may be enforced by either the  
4 director or the injured employee, or in the case of death, his THE EMPLOYEE'S  
5 dependents, and all lawful remedies for the collection of judgments,  
6 including provisional remedies, are available. This section does not create  
7 any right of action or recovery against the employer's workers' compensation  
8 insurance carrier, and the additional penalty provided by this section is not  
9 a compensation benefit under title 23, chapter 6 and is not subject to the  
10 payment of attorney fees.

11 Sec. 40. Repeal

12 Section 3-3116, Arizona Revised Statutes, is repealed.

13 Sec. 41. Section 36-897.01, Arizona Revised Statutes, is amended to  
14 read:

15 36-897.01. Certification; application; fees; rules; fingerprinting

16 A. A child care group home shall be certified by the department.

17 B. An application for certification OR RECERTIFICATION shall be made  
18 on a form prescribed by the department and shall contain all information  
19 required by the department.

20 B. IF A CHILD CARE GROUP HOME IS WITHIN ONE-FOURTH MILE OF AGRICULTURE  
21 LAND, THE APPLICATION SHALL INCLUDE THE NAMES AND ADDRESSES OF THE OWNERS AND  
22 LESSEES OF ANY AGRICULTURAL LAND WITHIN ONE-FOURTH MILE OF THE FACILITY.  
23 WITHIN TEN DAYS OF RECEIPT OF AN APPLICATION FOR CERTIFICATION OR  
24 RECERTIFICATION, THE DEPARTMENT SHALL NOTIFY THE OWNERS AND LESSEES OF  
25 AGRICULTURAL LAND AS LISTED ON THE APPLICATION. THE DEPARTMENT SHALL DENY  
26 ANY CERTIFICATION OR RECERTIFICATION THAT AFFECTS AGRICULTURAL LAND REGULATED  
27 PURSUANT TO SECTION 3-365, EXCEPT THAT THE OWNER OF THE AGRICULTURAL LAND MAY  
28 AGREE TO COMPLY WITH THE BUFFER ZONE REQUIREMENTS OF SECTION 3-365. IF THE  
29 OWNER AGREES IN WRITING TO COMPLY WITH THE BUFFER ZONE REQUIREMENTS AND  
30 RECORDS THE AGREEMENT IN THE OFFICE OF THE COUNTY RECORDER AS A RESTRICTIVE  
31 COVENANT RUNNING WITH THE TITLE TO THE LAND, THE DEPARTMENT MAY CERTIFY OR  
32 RECERTIFY THE CHILD CARE GROUP HOME TO BE LOCATED WITHIN THE AFFECTED BUFFER  
33 ZONE. THE AGREEMENT MAY INCLUDE ANY STIPULATIONS REGARDING THE CHILD CARE  
34 GROUP HOME, INCLUDING CONDITIONS FOR FUTURE EXPANSION OF THE FACILITY AND  
35 CHANGES IN THE OPERATIONAL STATUS OF THE FACILITY THAT WILL RESULT IN A  
36 BREACH OF THE AGREEMENT. THIS SUBSECTION APPLIES TO THE RENEWAL OF A  
37 CERTIFICATION FOR A CHILD CARE GROUP HOME LOCATED IN THE SAME LOCATION IF THE  
38 CHILD CARE GROUP HOME CERTIFICATION WAS NOT PREVIOUSLY ISSUED UNDER THIS  
39 SUBSECTION.

40 C. An application shall be accompanied by a nonrefundable application  
41 fee of thirty dollars.

42 D. The department shall issue a certificate if the department  
43 determines that the applicant and the applicant's child care group home are  
44 in substantial compliance with the requirements of this article and

1 department rules and the facility agrees to carry out a plan acceptable to  
2 the director to eliminate any deficiencies.

3 E. A certificate is valid for three years and may be renewed for  
4 successive three-year periods by submitting an application for  
5 recertification as prescribed by the department and submitting a  
6 nonrefundable renewal fee of thirty dollars. An applicant for certification  
7 renewal who fails to submit the application forty-five days before the  
8 expiration of the certificate is subject to a twenty-five dollar late filing  
9 fee. Late filing fees collected pursuant to this subsection shall be  
10 deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

11 F. In order to ensure that the equipment and services of a child care  
12 group home and the good character of an applicant are conducive to the  
13 welfare of children, the department by rule shall establish the criteria for  
14 granting, denying, suspending and revoking a certificate.

15 G. The director shall adopt rules and prescribe forms as may be  
16 necessary for the proper administration and enforcement of this article.

17 H. The certificate shall be conspicuously posted in the child care  
18 group home for viewing by parents and the public.

19 I. Current department inspection reports shall be kept at the child  
20 care group home and shall be made available to parents on request.

21 J. A certificate is not transferable and is valid only for the  
22 location occupied at the time it is issued.

23 K. An applicant for a child care group home certificate shall submit  
24 the notarized form required pursuant to section 36-897.03, subsection B with  
25 the application and shall have a valid fingerprint clearance card issued  
26 pursuant to title 41, chapter 12, article 3.1. Certification of the home and  
27 registration of the applicant are conditioned on receipt of the notarized  
28 form and possession of a valid fingerprint clearance card by the applicant.

29 L. The department of health services shall notify the department of  
30 public safety if the department of health services receives credible evidence  
31 that a person who possesses a valid fingerprint clearance card either:

32 1. Is arrested for or charged with an offense listed in section  
33 41-1758.03, subsection B.

34 2. Falsified information on the form required by subsection K of this  
35 section.

36 Sec. 42. Retroactivity

37 Sections 27 and 31 of this act are effective retroactively to from and  
38 after June 30, 2004.

APPROVED BY THE GOVERNOR JUNE 1, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 1, 2004.

Passed the House March 15, 2004,

Passed the Senate April 26, 2004,

by the following vote: 57 Ayes,

by the following vote: 30 Ayes,

0 Nays, 3 Not Voting

0 Nays, 0 Not Voting

Jake Flake  
Speaker of the House

Ken Bennett  
President of the Senate

Norman L. Moore  
Chief Clerk of the House

Channing Billings  
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary to the Governor

Approved this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of Arizona

**EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State

H.B. 2616

HOUSE FINAL PASSAGE  
as per Joint Conference

Passed the House May 19, 2004,

by the following vote: 48 Ayes,

11 Nays, 1 Not Voting

Jake Flake  
Speaker of the House

Norman L. Spore  
Chief Clerk of the House

SENATE FINAL PASSAGE  
as per Joint Conference

Passed the Senate May 24, 2004,

by the following vote: 27 Ayes,

2 Nays, 1 Not Voting

Ken Bennett  
President of the Senate

Chasmin Billington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor

this 25<sup>th</sup> day of May, 2004,

at 11:33 o'clock a. M.

Jennifer Upbarra  
Secretary to the Governor

Approved this 1 day of

June, 2004,

at 3<sup>45</sup> o'clock P. M.

J. R. McElroy  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 1 day of June, 2004,

at 4:38 o'clock P. M.

Janice K. Brewer  
Secretary of State

H.B. 2616